



January 25, 2008

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## SENATE BILL No. 90

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DIGEST OF SB 90 (Updated January 22, 2008 3:19 pm - DI 106)

**Citations Affected:** IC 9-26; IC 9-30; IC 35-50; noncode.

**Synopsis:** Operating while intoxicated offenses and procedures. Specifies that felony resisting law enforcement and operating while intoxicated (OWI) causing serious bodily injury are crimes of violence. Makes: (1) OWI committed by a person with a previous conviction for OWI resulting in serious bodily injury a Class C felony; (2) OWI causing serious bodily injury a Class C felony; (3) OWI causing serious bodily injury committed by a person with a previous conviction for OWI a Class B felony; (4) OWI causing death a Class B felony; (5) OWI causing death committed by a person with a previous conviction a Class A felony; and (6) OWI causing death committed by a person with a blood alcohol level greater than .15% a Class A felony. Permits a court to require a license suspension imposed as the result of a conviction for operating while intoxicated to be imposed before or after, or both before and after, any period of incarceration. Makes leaving the scene of an accident after committing operating while intoxicated causing death or serious bodily injury a Class B felony.

**Effective:** July 1, 2008.

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**Alting, Steele, Arnold,  
Young R Michael**

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January 8, 2008, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.  
January 24, 2008, amended, reported favorably — Do Pass.

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SB 90—LS 6368/DI 106+



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January 25, 2008

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## SENATE BILL No. 90

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 9-26-1-8 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) A person who **knowingly or**  
3 **intentionally** fails to stop or comply with section 1(1) or 1(2) of this  
4 chapter after causing injury to a person commits a Class A  
5 misdemeanor. However, the offense is:

6 (1) a Class D felony if:

7 (A) the accident involves serious bodily injury to a person; or

8 (B) within the five (5) years preceding the commission of the  
9 offense, the person had a previous conviction of any of the  
10 offenses listed in IC 9-30-10-4(a); ~~and~~

11 (2) a Class C felony if the accident involves the death of a person;

12 (3) a Class B felony if the person **knowingly or intentionally**  
13 **fails to stop or comply with section 1(1) or 1(2) of this chapter**  
14 **after committing operating while intoxicated causing serious**  
15 **bodily injury (IC 9-30-5-4); and**

16 (4) a Class A felony if the person **knowingly or intentionally**  
17 **failed to stop or comply with section 1(1) or 1(2) of this**

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**chapter after committing operating while intoxicated causing death (IC 9-30-5-5).**

(b) A person who **knowingly or intentionally** fails to stop or comply with section 3 or 4 of this chapter after causing damage to the property of another person commits a Class B misdemeanor.

SECTION 2. IC 9-30-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. **(a) Except as provided in subsection (b)**, a person who violates section 1 or 2 of this chapter commits a Class D felony if:

(1) the person has a previous conviction of operating while intoxicated that occurred within the five (5) years immediately preceding the occurrence of the violation of section 1 or 2 of this chapter; or

(2) the person:

(A) is at least twenty-one (21) years of age;

(B) violates section 1(b) or 2(b) of this chapter; and

(C) operated a vehicle in which at least one (1) passenger was less than eighteen (18) years of age.

**(b) A person who violates section 1 or 2 of this chapter commits a Class C felony if:**

**(1) the person has a previous conviction of operating while intoxicated causing death (IC 9-30-5-5); or**

**(2) the person has a previous conviction of operating while intoxicated causing serious bodily injury (IC 9-30-5-4).**

SECTION 3. IC 9-30-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. (a) A person who causes serious bodily injury to another person when operating a motor vehicle:

(1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

(2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's body; or

(3) while intoxicated;

commits a ~~Class D~~ **Class C** felony. However, the offense is a ~~Class C~~ **Class B** felony if the person has a previous conviction of operating while intoxicated within the five (5) years preceding the commission of the offense.

(b) A person who violates subsection (a) commits a separate offense for each person whose serious bodily injury is caused by the violation of subsection (a).

(c) It is a defense under subsection (a)(2) that the accused person

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consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

SECTION 4. IC 9-30-5-5, AS AMENDED BY P.L.2-2005, SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) A person who causes the death of another person when operating a motor vehicle:

(1) with an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath;

(2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; or

(3) while intoxicated;

commits a Class C felony. However, the offense is a Class B felony if the person has a previous conviction of operating while intoxicated within the five (5) years preceding the commission of the offense, or if the person operated the motor vehicle when the person knew that the person's driver's license, driving privilege, or permit is suspended or revoked for a previous conviction for operating a vehicle while intoxicated.

(b) A person at least twenty-one (21) years of age who causes the death of another person when operating a motor vehicle:

(1) with an alcohol concentration equivalent to at least fifteen-hundredths (0.15) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood; or

(B) two hundred ten (210) liters of the person's breath; or

(2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood;

commits a ~~Class B~~ Class A felony.

(c) A person who violates subsection (a) or (b) commits a separate offense for each person whose death is caused by the violation of subsection (a) or (b).

(d) It is a defense under subsection (a)(2) or subsection (b)(2) that the accused person consumed the controlled substance under a valid prescription or order of a practitioner (as defined in IC 35-48-1) who acted in the course of the practitioner's professional practice.

SECTION 5. IC 9-30-5-10, AS AMENDED BY P.L.172-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 10. (a) In addition to a criminal penalty imposed for an offense under this chapter or IC 14-15-8, the court shall, after reviewing the person's bureau driving record and other relevant

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evidence, recommend the suspension of the person's driving privileges for the fixed period of time specified under this section. **The court may require that a period of suspension recommended under this section be imposed, if applicable, before a period of incarceration or after a period of incarceration, or both before and after a period of incarceration, as long as the suspension otherwise complies with the periods established in this section.**

(b) If the court finds that the person:

(1) does not have a previous conviction of operating a vehicle or a motorboat while intoxicated; or

(2) has a previous conviction of operating a vehicle or a motorboat while intoxicated that occurred at least ten (10) years before the conviction under consideration by the court;

the court shall recommend the suspension of the person's driving privileges for at least ninety (90) days but not more than two (2) years.

(c) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred more than five (5) years but less than ten (10) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one hundred eighty (180) days but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay.

(d) If the court finds that the person has a previous conviction of operating a vehicle or a motorboat while intoxicated and the previous conviction occurred less than five (5) years before the conviction under consideration by the court, the court shall recommend the suspension of the person's driving privileges for at least one (1) year but not more than two (2) years. The court may stay the execution of that part of the suspension that exceeds the minimum period of suspension and grant the person probationary driving privileges for a period of time equal to the length of the stay. If the court grants probationary driving privileges under this subsection, the court shall order that the probationary driving privileges include the requirement that the person may not operate a motor vehicle unless the motor vehicle is equipped with a functioning certified ignition interlock device under IC 9-30-8. However, the court may grant probationary driving privileges under this subsection without requiring the installation of an ignition interlock device if the person is successfully participating in a court supervised alcohol treatment program in which the person is taking disulfiram or a similar substance

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that the court determines is effective in treating alcohol abuse. The person granted probationary driving privileges under this subsection shall pay all costs associated with the installation of an ignition interlock device unless the sentencing court determines that the person is indigent.

(e) If the conviction under consideration by the court is for an offense under:

- (1) section 4 of this chapter;
- (2) section 5 of this chapter;
- (3) IC 14-15-8-8(b); or
- (4) IC 14-15-8-8(c);

the court shall recommend the suspension of the person's driving privileges for at least two (2) years but not more than five (5) years.

(f) If the conviction under consideration by the court is for an offense involving the use of a controlled substance listed in schedule I, II, III, IV, or V of IC 35-48-2, in which a vehicle was used in the offense, the court shall recommend the suspension or revocation of the person's driving privileges for at least six (6) months.

SECTION 6. IC 35-50-1-2, AS AMENDED BY P.L.1-2006, SECTION 549, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) As used in this section, "crime of violence" means **the following**:

- (1) Murder (IC 35-42-1-1).
- (2) Attempted murder (IC 35-41-5-1).
- (3) Voluntary manslaughter (IC 35-42-1-3).
- (4) Involuntary manslaughter (IC 35-42-1-4).
- (5) Reckless homicide (IC 35-42-1-5).
- (6) Aggravated battery (IC 35-42-2-1.5).
- (7) Kidnapping (IC 35-42-3-2).
- (8) Rape (IC 35-42-4-1).
- (9) Criminal deviate conduct (IC 35-42-4-2).
- (10) Child molesting (IC 35-42-4-3).
- (11) Sexual misconduct with a minor as a Class A felony under IC 35-42-4-9(a)(2) or a Class B felony under IC 35-42-4-9(b)(2).
- (12) Robbery as a Class A felony or a Class B felony (IC 35-42-5-1).
- (13) Burglary as a Class A felony or a Class B felony (IC 35-43-2-1). ~~or~~
- (14) **Operating a motor vehicle while intoxicated** causing death ~~when operating a motor vehicle~~ (IC 9-30-5-5).
- (15) **Operating a motor vehicle while intoxicated causing serious bodily injury to another person** (IC 9-30-5-4).

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**(16) Resisting law enforcement as a felony (IC 35-44-3-3).**

(b) As used in this section, "episode of criminal conduct" means offenses or a connected series of offenses that are closely related in time, place, and circumstance.

(c) Except as provided in subsection (d) or (e), the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the:

(1) aggravating circumstances in IC 35-38-1-7.1(a); and

(2) mitigating circumstances in IC 35-38-1-7.1(b);

in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

(d) If, after being arrested for one (1) crime, a person commits another crime:

(1) before the date the person is discharged from probation, parole, or a term of imprisonment imposed for the first crime; or

(2) while the person is released:

(A) upon the person's own recognizance; or

(B) on bond;

the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.

(e) If the factfinder determines under IC 35-50-2-11 that a person used a firearm in the commission of the offense for which the person was convicted, the term of imprisonment for the underlying offense and the additional term of imprisonment imposed under IC 35-50-2-11 must be served consecutively.

**SECTION 7. [EFFECTIVE JULY 1, 2008] IC 9-26-1-8, IC 9-30-5-3, IC 9-30-5-4, and IC 9-30-5-5, all as amended by this act, apply only to crimes committed after June 30, 2008.**

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## SENATE MOTION

Madam President: I move that Senator Steele be added as second author and Senator Arnold be added as third author of Senate Bill 90.

ALTING

## SENATE MOTION

Madam President: I move that Senator Young R Michael be added as coauthor of Senate Bill 90.

ALTING

## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 90, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 12, after "person" insert "**knowingly or intentionally**".

Page 1, line 16, after "person" insert "**knowingly or intentionally**".

Page 2, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 2. IC 9-30-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. **(a) Except as provided in subsection (b),** a person who violates section 1 or 2 of this chapter commits a Class D felony if:

(1) the person has a previous conviction of operating while intoxicated that occurred within the five (5) years immediately preceding the occurrence of the violation of section 1 or 2 of this chapter; or

(2) the person:

(A) is at least twenty-one (21) years of age;

(B) violates section 1(b) or 2(b) of this chapter; and

(C) operated a vehicle in which at least one (1) passenger was less than eighteen (18) years of age.

**(b) A person who violates section 1 or 2 of this chapter commits a Class C felony if:**

**(1) the person has a previous conviction of operating while intoxicated causing death (IC 9-30-5-5); or**

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**(2) the person has a previous conviction of operating while intoxicated causing serious bodily injury (IC 9-30-5-4)."**

Page 2, line 15, strike "Class D" and insert "**Class C**".

Page 2, line 15, strike "Class C" and insert "**Class B**".

Page 2, line 17, delete "offense," and insert "offense."

Page 2, line 17, delete "and".

Page 2, delete lines 18 through 21.

Page 3, line 4, delete "intoxicated," and insert "intoxicated."

Page 3, line 4, delete "and the offense is a Class A felony if the person who".

Page 3, delete lines 5 through 7.

Page 3, line 16, strike "Class B" and insert "**Class A**".

Page 6, line 20, after "IC 9-26-1-8," insert "**IC 9-30-5-3**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 90 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 7, Nays 3.

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